

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
COLEMAN COUNTY TELEPHONE)	
COOPERATIVE, INC)	
)	
Applications For Authority to Construct and)	File Nos. BPMDH-20020420ABI
Operate A New Response Station Hub Utilizing)	BPIFH-2001-420ABJ
Multipoint Distribution Service Stations WMY236)	
and WMY240 (Santa Anna, Texas))	
)	
Applications For Renewal of License of Multipoint)	BRMD-20011113AAB
Distribution Service Stations WMY236 and)	BRMD-20011113AAB
WMY240 (Santa Anna, Texas))	
)	
Petitions For Renewal of License of Multipoint)	98-50410
Distribution Service Stations WMY240 and)	98-50411
WMY236 (Santa Anna, Texas))	
)	
Request for Special Temporary Authority to)	
Operate Station WMY236 (Santa Anna, Texas))	

MEMORANDUM OPINION AND ORDER

Adopted: March 7, 2003

Released: March 18, 2003

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we address the renewal applications, reinstatement requests, and waiver requests of the Coleman County Telephone Cooperative, Inc. (Coleman County) for Multipoint Distribution Service (MDS) Stations WMY240 and WMY236, Santa Ana Texas (collectively, the Stations).¹ Additionally, we consider Coleman County's proposed modifications for the Stations. In conjunction with our consideration of the modification applications, we will address a Consolidated Petition to Deny filed by Central Texas Communications, Inc. (Central Texas) opposing Coleman County's modification application for Station WMY240. Finally, we consider Coleman County's request for special temporary authority (STA) for Station WMY236.

¹ Effective March 25, 2002, the Commission transferred regulatory functions for the Instructional Television Fixed Service and the Multipoint Distribution Service/Multichannel Multipoint Distribution Service from the Mass Media Bureau to the Wireless Telecommunications Bureau (Bureau). Radio Services Are Transferred From Mass Media Bureau to Wireless Telecommunications Bureau, *Public Notice*, 17 FCC Red 5077 (2002). Accordingly, the Bureau's Public Safety and Private Wireless Division assumed all regulatory duties associated with these services effective March 25, 2002. *Id.*

2. For the reasons discussed below, we deny its waiver requests, we dismiss Coleman County's renewal applications, dismiss its petitions for reinstatement, and dismiss Coleman County's modification application for Station WMY240. Consequently, we will dismiss Central Texas' petition to deny against Coleman County's application to construct and operate a new MDS response station hub. Finally, we grant Coleman County limited STA to operate Station WMY236.

II. BACKGROUND

3. On February 12, 1997, Coleman County was granted authorizations to operate two MDS stations on Channels H2 and H3 in Santa Anna, Texas, which were scheduled to expire on May 1, 2001. On April 20, 2001, Coleman County filed modification applications to construct and operate a new MDS response station hub on Channels H2 and H3 channels.² On June 25, 2001, Central Texas, the licensee of MDS Station WNTK967, opposed the modification application for Station WMY240.³ On July 13, 2001, the Commission conditionally granted Coleman County's application to modify Station WMY236.⁴ Specifically, the conditional grant required Coleman County to comply with Sections 21.43, 21.44, 21.45, 21.929 and 21.930 of the Commission's Rules.⁵ The expiration date of this license remained May 1, 2001. On August 21, 2001, Coleman County amended its modification application for Station WMY240 by lowering the requested power levels.⁶

4. On November 9, 2001, Coleman County requested an STA to continue the operation of Station WMY236.⁷ On November 13, 2001, Coleman County requested renewal and reinstatement of the licenses for Station WMY236 and Station WMY240.⁸ On the same date, Coleman County requested a waiver of the reinstatement filing requirement in Section 21.44(b)(1) of the Commission's Rules for the Stations.⁹ On November 14, 2001, Coleman supplemented its STA request for Station WMY236.¹⁰

² See Mass Media Bureau Instructional Television Fixed Service Multipoint Distribution Service Applications Accepted for Filing, Report No. 355, Apr. 26, 2001; See also File Nos. BPMDH-20020420ABI (Channel H2) and BPIFH-2001-420ABJ (Channel H3).

³ Central Texas Communications, Inc., Petition to Deny, filed June 25, 2001 (Central Texas Two-Way Petition).

⁴ See Mass Media Bureau Instructional Television Fixed Service Multipoint Distribution Service Actions, Report No. 439, Jul. 18, 2001; See also File Nos. BPMDH-20010420ABI (Channel H2).

⁵ 47 C.F.R. § 21.43 requires licensees to construct their stations within twelve months of license grant. 47 C.F.R. § 21.44 requires that a licensee will automatically forfeit its license if the licensee fails to notify the Commission that it has completed construction of its facilities. 47 C.F.R. § 21.45 provides that an MDS license term will not exceed ten years. 47 C.F.R. § 21.929 provides the license term for BTA authorizations. 47 C.F.R. § 21.930 provides a five-year build-out period for BTA authorization holders.

⁶ See Mass Media Bureau Instructional Television Fixed Service Multipoint Distribution Service Applications Accepted for Filing, Report No. 484, Aug. 24, 2001; See also File No. BLNAMDH-20010821AAC (Channel H3).

⁷ See Coleman County Telephone Cooperative, Requests for Special Temporary Authority, filed Nov. 9, 2002 (STAs).

⁸ See Mass Media Bureau Instructional Television Fixed Service Multipoint Distribution Service Applications Accepted for Filing, Report No. 593, Nov. 27, 2001; See also File Nos. BRMD-20011113AAC (Channel H2) and BRMD-20011113AAB (Channel H3); Coleman County Telephone Cooperative, Petitions for Renewal and Reinstatement, filed Nov. 13, 2002 (Renewal/Reinstatement Petitions).

⁹ See Coleman County Telephone Cooperative, Petitions for Waiver, filed Nov. 13, 2002 (Waiver Requests).

¹⁰ See Coleman County Telephone Cooperative, Supplement to Requests for Special Temporary Authority, filed Nov. 14, 2002 (Supplemental STA). The Supplement corrected the station reference in the first paragraph of the request. *Id.*

II. DISCUSSION

A. Renewal Applications

5. Under the Commission's rules pertaining to MDS, licensees must file their renewal applications between thirty and sixty days prior to the license expiration date.¹¹ If a licensee fails to file a timely renewal application, the licensee automatically forfeits the MDS station license as of the expiration date.¹² A licensee may file a petition for reinstatement of a forfeited license within thirty days of the license expiration date.¹³ A timely filed petition for reinstatement must adequately explain the failure to timely file the renewal application, and specify the procedures the licensee has established to ensure timely filings in the future.¹⁴ Section 21.44(b) of the Commission's Rules limits consideration of reinstatement petitions to petitions that are filed within thirty days of the expiration date of the license.¹⁵

6. Coleman County's licenses for Stations WMY236 and WMY240 expired on May 1, 2001 without further action by the Commission because Coleman County failed to submit timely renewal applications for the stations. Coleman County was required to submit renewal applications for the Stations between March 1, 2001 and April 1, 2001. However, Coleman County did not file its renewal applications until November 13, 2001. Thus, the renewal applications were untimely in accordance with Section 21.11(c) of the Commission's Rules.¹⁶

7. In light of Coleman County's failure to file timely renewal applications, it had another option under the rules to regain the authorization for Stations WMY236 and WMY240 – namely, to file a petition for reinstatement.¹⁷ Under the Commission's Rules, Coleman County had until June 1, 2001, thirty days after the license expiration date, to submit its reinstatement request. Coleman County, however, did not file the petition for reinstatement until November 13, 2001.¹⁸ In conjunction with its reinstatement petition, Coleman County requested a waiver of the filing deadline set forth in Section 21.44(b)(1) of the Commission's Rules for such petition.

8. Because Coleman County failed to meet either filing deadline, a waiver is required for us to provide the requested relief.¹⁹ We may grant such a waiver if the purpose of the rule will not be served or would be frustrated by its application in the case and that grant of the waiver is otherwise in the public interest. The Commission's MDS reinstatement rule serves two purposes: to ensure that parties will have a date certain after which they may file applications for an area covered by an expired license; and to ensure uninterrupted, authorized service to the public.²⁰ The Commission has a strong interest in

¹¹ See 47 C.F.R. § 21.11(c).

¹² *Burlington Cablevision, Inc., Order on Reconsideration*, 13 FCC Rcd 772 ¶ 7 (VSD MMB 1998) (*Burlington*); *Superior Broadcasting Corporation, Memorandum Opinion and Order*, 7 FCC Rcd 7543 (DRB CCB 1992) (*Superior*); see also 47 C.F.R. § 21.44.

¹³ *Burlington*, 13 FCC Rcd 772 ¶ 7 citing 47 C.F.R. § 21.44(b)(1) – (3).

¹⁴ *Id.*

¹⁵ See 47 C.F.R. § 21.44(b)(1).

¹⁶ See 47 C.F.R. § 21.11(c); *Burlington*, 13 FCC Rcd at 775 ¶ 7.

¹⁷ See 47 C.F.R. § 21.44(b)(1).

¹⁸ See para. 4.

¹⁹ See *Burlington*, 13 FCC Rcd at 775 ¶ 7; see also *Superior Broadcasting*, 7 FCC Rcd 7543.

²⁰ See *Burlington*, 13 FCC Rcd at 778 ¶ 16; see also *Superior Broadcasting*, 7 FCC Rcd at 7543 ¶ 4.

preserving the clarity of when other applicants may permissibly file for spectrum previously utilized by expired stations.²¹

9. We find that Coleman County has failed to make the requisite showing that grant of a waiver is warranted under the circumstances presented. “An applicant for waiver faces a high hurdle even at the starting gate. When an applicant seeks a waiver of a rule, it must plead with particularity the facts and circumstances which warrant such action.”²² Coleman County asserts that waiver of the reinstatement filing requirement is warranted because the failure to renew the license was the result of oversight due to a change in management.²³ Coleman County asserts that no further lapses in complying with the Commission’s filing requirements will occur because it has taken actions to rectify the previous omissions.²⁴ Coleman County also maintains that extending the period for filing its reinstatement petitions by less than 180 days does not undermine the Commission’s policy goals, but would ensure the goal of delivering uninterrupted service to the public.²⁵ Coleman County argues that without a waiver, there would be an indefinite interruption of service to current wireless cable service subscribers, a reduced number of media outlets in the markets, and a delay in deployment of advanced services such as high-speed Internet to the area.²⁶

10. We believe that to grant the waiver request and reinstate the forfeited license, under the circumstances presented here, would frustrate the goal of providing a date certain upon which one may file an application for an area covered by an expired license and the goal of ensuring uninterrupted, authorized service to the public and would be inconsistent w/case precedent.²⁷ We do not believe that Coleman County’s reasons, management failures and providing uninterrupted *unauthorized* service, warrant grant of a waiver.²⁸ Coleman County has not shown how granting a waiver due to management failures will ensure that parties will have a date certain after which they may file applications for an area covered by an expired license and ensures uninterrupted, *authorized* service to the public. In fact, Coleman County has shown the opposite. Coleman County filed its waiver request over six months after its license expired. To allow the grant of a waiver in this context would eviscerate the reinstatement rule.²⁹ Accordingly, we deny Coleman County’s waiver requests. In light of our denial of Coleman County’s waiver requests, its renewal applications and Petitions for reinstatement are subject to dismissal on the basis that they were untimely filed.³⁰

²¹ See *Burlington*, 13 FCC Rcd at 778 ¶ 16.

²² *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT*).

²³ Waiver Requests at 4.

²⁴ *Id.* at 5 (compiling and organizing internal systems to track all FCC-related compliance measures, designating specific employees to oversee licensing and compliance matters).

²⁵ *Id.* at 5-6.

²⁶ *Id.* at 7-8.

²⁷ See *Burlington*, 13 FCC Rcd 775 ¶ 16.

²⁸ Emphasis added. 47 C.F.R. § 21.19 requires a person seeking a waiver to demonstrate unique facts and circumstances. See *Burlington*, 13 FCC Rcd 780 ¶ 19.

²⁹ See *WAIT*, 418 F.2d at 1159 (the Commission neither “must [n]or should tolerate evisceration of a rule by waivers.”

³⁰ See 47 C.F.R. §§ 21.11(c), 21.44(b)(1).

B. Modification Applications

11. As stated previously, in 2001, Coleman County filed modification applications to construct and operate a new MDS response station hub on Channels H2 and H3.³¹ On May 1, 2001, the licenses for Stations WMY240 and WMY236 expired without further action by the Commission.³² However, on July 18, 2001, the former Mass Media Bureau granted Coleman County's modification application for Station WMY236. As we have denied Coleman County's reinstatement petitions and waiver requests and dismissed the renewal applications, Coleman County has no authorization for Station WMY240.³³ Accordingly, Coleman County cannot modify a license that it no longer possesses.³⁴ Under these circumstances, we dismiss Coleman County's modification application for Station WMY240 and the associated pleadings.³⁵

12. With regard to Station WMY236, we must determine what effect, if any, the conditional grant of the modification application had on the expired license. As noted previously, Coleman County's modification application was granted subject to Coleman County complying with Section 21.44 of the Commission's Rules. Under Section 21.44 of the Commission's Rules, a license terminates without further action by the Commission on the expiration date of the license unless prior to the expiration, the licensee has filed a renewal application. The conditional grant did not extend the expiration date of Station WMY236.³⁶ When Coleman County failed to renew its modified license on May 1, 2002, the license automatically terminated.³⁷ Thus, we believe that the conditional grant is no longer operative as well.

C. Special Temporary Authority

13. Earlier, we noted that Coleman County requested an STA to continue the operation of Station WMY236 in Santa Anna, Texas.³⁸ The Commission permits applicants to request immediate or temporary use of facilities in limited circumstances. Coleman County argues that we should grant it an STA to operate Station WMY236 because there are extraordinary circumstances requiring operation in the public interest and that delay in the institution of such service would prejudice the public interest.³⁹

³¹ See Mass Media Bureau Instructional Television Fixed Service Multipoint Distribution Service Applications Accepted for Filing, Report No. 355, Apr. 26, 2001; See also File Nos. BPMDH-20020420ABI (Channel H2) and BPIFH-2001-420ABJ (Channel H3).

³² See para. 6.

³³ See James A. Kay, Jr., *Memorandum Opinion and Order*, 17 FCC Rcd 5951 ¶ 6 (PSPWD, WTB 2002) (when a license expires, a licensee has nothing to modify because the authorization no longer exists) citing *Jefferson Radio Co., Inc., v. FCC*, 340 F.2d 781, 783 (D.C. Cir. 1964) (when a licensee's authority to operate is terminated by the Commission, the authorization has, in effect, "reverted" to the Commission).

³⁴ See 47 C.F.R. § 21.3(a) which provides that no modification of a station may be commenced without an authorization from the Commission.

³⁵ See Central Texas Two-Way Petition.

³⁶ See Conditional License of Coleman County Telephone Cooperative, Inc. for Call Sign WMY236, File No. BPMDH-20010420ABI.

³⁷ See note 33.

³⁸ See para. 4.

³⁹ Coleman County STA Request at 3.

14. Section 21.25(b) of the Commission's Rules permits the grant of an STA in several circumstances. Notably, for Coleman County, we may grant an STA to permit interim operation to provide the same service as previously authorized.⁴⁰ We believe that interim operation would serve the public interest in this situation because it would allow Coleman County an opportunity to notify its customers that it must cease operations.⁴¹ Accordingly, Coleman County's customers can avail themselves of a smooth transition to alternate service arrangements.⁴² Because we believe that a transition period will be least disruptive to Coleman County's customers, we will grant Coleman County an STA for six months from the release date of this *Memorandum Opinion and Order*.⁴³

15. Finally, in light of our findings concerning the renewal, reinstatement and modification of Station WMY236, we believe that issuance of an interim STA would be appropriate. Coleman County seeks an STA because it failed to renew its license. This situation is a direct consequence of Coleman County's failure to timely renew its license. Under these circumstances, Coleman County has not shown that an indefinite STA is warranted.

III. ORDERING CLAUSES

16. Accordingly IT IS ORDERED that pursuant to the authority contained in Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i) and Section 21.19 of the Commission's Rules, 47 C.F.R. § 21.19, the Petitions for Waiver for Stations WMY236 and WMY240 filed by Coleman County Telephone Cooperative, Inc. on November 13, 2001 ARE DENIED.

17. IT IS FURTHER ORDERED that pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309 and Section 21.11 of the Commission's Rules, 47 C.F.R. § 21.11(c), the applications for renewal of licenses for Multipoint Distribution Service Stations WMY236 and WMY240 filed by Coleman County Telephone Cooperative, Inc. on November 13, 2001 ARE DISMISSED.

18. IT IS FURTHER ORDERED that pursuant to the authority contained in Sections 4(i), and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309 and Section 21.44(b) of the Commission's Rules, 47 C.F.R. § 21.44(b), the reinstatement requests for Stations WMY236 and WMY240 filed by Coleman County Telephone Cooperative, Inc. on November 13, 2001 ARE DISMISSED.

19. IT IS FURTHER ORDERED that pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309 and Section 21.40 of the Commission's Rules, 47 C.F.R. § 21.40, the application for modification of Multipoint Distribution Service Station WMY240 filed by Coleman County Telephone Cooperative, Inc. on April 26, 2001 IS DISMISSED.

⁴⁰ See 47 C.F.R. 21.25(b)(3).

⁴¹ See Celtronix Telemetry, *Order on Reconsideration*, 16 FCC Rcd 16,614, 16,617 ¶ 8 (WTB, PSPWD 2001).

⁴² *Id.*

⁴³ We believe that this six-month period should also provide Coleman County with sufficient time to notify its customers consistent with any other requirements that may be applicable under by the Commission's Rules. See e.g., 47 C.F.R. § 21.910(a).

20. IT IS FURTHER ORDERED that pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, the Consolidated Petition to Deny filed by Central Texas Communications, Inc. on December 27, 2001 and associated pleadings ARE DISMISSED.

21. IT IS FURTHER ORDERED that pursuant to Sections 4(i) and 309(f) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(f) and Section 21.25(b)(4) of the Commission's Rules, 47 C.F.R. § 21.25(b)(4), the requests for special temporary authority for Multipoint Distribution Service Station WMY236 filed by Coleman County Telephone Cooperative, Inc. on November 13, 2001 IS GRANTED TO THE EXTENT INDICATED HEREIN.

22. This action taken under delegated authority pursuant to Sections 0.31 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau